No. 88-1058

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

WILLIAM D. TREEBY AND STATE FARM FIRE AND CASUALTY COMPANY,

Petitioners,

versus

DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, NO. 04024-K, AND IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., NO. 04025-K,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court for the State of Louisiana

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the Louisiana Court of Appeals for the Fourth Circuit was correct in finding that the District Court of Orleans Parish had the right to exercise jurisdiction over this lawsuit.

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WILLIAM D. TREEBY AND STATE FARM FIRE AND CASUALTY COMPANY,

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DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, NO. 04024-K, AND IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., NO. 04025-K,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court for the State of Louisiana

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, David V. Adler, Trustee in Bankruptcy, in the Matter of Marvin E. Gorman and Virginia A.

Gorman, No. 04024-K, and in the Matter of Marvin Gorman Ministries, Inc., formerly Who Cares Ministries, Inc., No. 04025-K, respectfully submits this Brief in Opposition to the Petition for Writ of Certiorari filed herein by William D. Treeby and State Farm Fire and Casualty Company.

STATEMENT OF THE CASE

Plaintiffs, Marvin Gorman and Marvin Gorman Ministries, Inc., instituted this action on March 24, 1987, naming thirteen separate defendants alleging defamation, libel, invasion of privacy and intentional infliction of emotional distress. On May 22, 1987, the plaintiffs' filed a First Supplemental and Amending Petition alleging a conspiracy by the defendants to defame and ruin Marvin Gorman and Marvin Gorman Ministries, Inc. The plaintiffs later amended their Petition naming two additional parties who allegedly participated in the conspiracy and also added the insurance companies of various defendants as permitted by Louisiana law.

On June 8, 1987, the District Court of Orleans Parish dismissed the General Council of Assemblies of God, Michael Indest and Lakeview Christian Center from this suit for lack of subject matter jurisdiction. Shortly thereafter, the other defendants joined in the Exception for Lack of Subject Matter Jurisdiction and the trial court dismissed all of the remaining defendants for lack of subject matter jurisdiction on August 31, 1987. At the

time of the hearing on the Exceptions, the plaintiffs had not been permitted to take one deposition. Since the trial court did not provide written reasons, it is assumed the court's dismissal for lack of subject matter jurisdiction was couched on the defendants' attorneys' representations, a copy of the Assemblies of God By-Laws and Constitution, and the ordination papers of Reverend Marvin Gorman that had been submitted to the court at the hearing.

In March, 1988, David V. Adler, Trustee in Bankruptcy, in the Matter of Marvin E. Gorman and Virginia A. Gorman, No. 04024-K, and in the Matter of Marvin Gorman Ministries, Inc., formerly Who Cares Ministries, Inc., No. 04025-K, was substituted as the proper party plaintiff.

On April 22, 1988, the Louisiana Court of Appeals for the Fourth Circuit Reversed and Remanded the case for trial asserting that the trail court had jurisdiction to the hear the case.

On September 23, 1988, the Louisiana Supreme Court denied the Petitioners' writ application on the issue of subject matter jurisdiction.

Following the Louisiana Supreme Court's denial of their writ application, the Petitioners filed a Petition for Writ of Certiorari with this Honorable Court.

SUMMARY OF ARGUMENT

The Louisiana Supreme Court and the Louisiana Court of Appeals for the Fourth Circuit properly concluded that the District Court of Orleans Parish maintain subject matter jurisdiction over this lawsuit.

ARGUMENT

I. THE LOUISIANA COURT OF APPEALS FOR THE FOURTH CIRCUIT CORRECTLY CONCLUDED (AND THE LOUISIANA SUPREME COURT AGREED) THAT THE TRIAL COURT HAD A RIGHT TO EXERCISE JURISDICTION OVER THIS CASE AND THAT THERE WAS NO INFRINGEMENT UPON THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND/OR ANY INTERFERENCE WITH PRECEDENCE OF THIS COURT OR ANY OTHER COURT FOR THAT MATTER.

A. The Louisiana Court of Appeals for the Fourth Circuit and the Louisiana Supreme Court correctly concluded that plaintiffs are not seeking civil review of an ecclesiastical matter.

Counsel for defendants have repeatedly argued before the trial court, Louisiana Court of Appeals for the Fourth Circuit, Louisiana Supreme Court and now before this Honorable Court that Gorman is disputing his dismissal as a minister and complaining of Assembly of God conduct exercised in accordance with the Assembly of God Constitution, By-Laws and teachings of scripture; obviously, to afford the defendants a separation of church and state argument. However, the Louisiana Court of

Appeals for the Fourth Circuit's decision concluded that Gorman was not disputing his dismissal. (Petitioners' App. 18, ¶ 1). Petitioners also contend that they acted in accordance with the Assemblies of God doctrine and discipline when disclosing Gorman's indiscretions (which Respondent contends are lies). The petitioners as part of their appendix attached the September 2, 1986 statement (Petitioners' App. 86), as well as the August 20, 1986 letter of Jimmy Swaggart (Petitioners' App. 84), but failed to attach the five-page statement authored by Jimmy Swaggart concerning Marvin Gorman (Respondent's App. 1).

Although a number of depositions are scheduled to be taken, the Plaintiffs/Respondents herein have had the opportunity to take two days of testimony from two defendants, Jimmy Swaggart and Cecil Janway. The testimonies reveal Jimmy Swaggart's conduct of August 20, 1986, in writing the letter and the statement, as well as Cecil Janway's conduct, in conjunction with other defendants, toward the September 2, 1986 statement did not further church discipline, church doctrine or individual beliefs, contrary to the representations to the courts below, as well as in the Petitioners' brief herein. (See Motion for Contempt and/or for Sanctions – Respondent's App. 6).

The First Amendment of the United States Constitution does not protect defamation nor does it deprive a Louisiana Court for exercising jurisdiction over defamation. The First Amendment of the United States Constitution and Article 1, Section 4 of the Louisiana Constitution both guarantee religious freedom and freedom from

interference by secular courts in the ecclesiastic matters of religious groups. *Serbian Eastern Orthodox Diocese for the U. S. and Canada v. Milojevich,* 426 U.S. 696, 96 S.Ct. 2372, 2389 (1976); *Wilkerson v. Battiste,* 393 So. 2d 195 (La. App. 1st Cir. 1980). However, malicious accusations allegedly voiced in an ecclesiastical setting, falsely indicting a man as a repeated adulterer, a demon, a father of illegitimate children, are not exercises of religious freedom protected by the First Amendment. Thus, the lower court's holding "that civil courts of Louisiana have subject matter jurisdiction over this suit" is a correct interpretation of the First Amendment of the United States Constitution and Article 1, Section 4 of the Louisiana Constitution requiring no review by this Court. For these reasons, the Petition for Writ of Certiorari should be denied.

B. The "Universal Church" argument is fictitious.

Although the Louisiana Court of Appeals for the Fourth Circuit, made an astute observation in its opinion on the defendants' argument of the universal church, (Petitioners' App. 19) the recent testimony of Jimmy Swaggart represents that no such belief exists. (See Motion for Contempt and/or Sanctions – Respondent's App. 6). For these reasons, the Petition for Writ of Certiorari should be denied.

C. The First Amendment of the United States Constitution or Article 1, Section 4 of the Louisiana Constitution do not protect lawless conduct even when the same is conducted in the name of religion.

Defamation in Louisiana is a quasi-offense governed by LSA-C.C. Article 2315 and where words *impute immorality* or other traits or acts calculated to arise hatred, ridicule, etc., the words are "defamatory per se." *Moreau v. Brenan,* 446 So. 2d 572 (La. App. 5th Cir. 1985). Where defamation is alleged, even in an ecclesiastical setting, the civil courts of this state may exercise subject matter jurisdiction. *Joiner v. Weeks,* 383 So. 2d 101, 102 (La. App. 3rd Cir. 1980). *See also Marianguinn v. The Church of Christ of Collinsville, Oklahoma, et al.,* No. 62,154 (Okl. Sup. Ct. January 17, 1989).

Although the Louisiana Court of Appeals for the Fourth Circuit did not address this question, it will be argued at trial that even if the defendants acted in furtherance of religious belief, (which is at all times denied) the same is not protected by the United States Constitution nor the Louisiana Constitution. For example, an individual cannot batter or kill another with immunity from prosecution, believing his/her actions to be a religious obligation. Neither can a man be acquitted of polygamy because he believed it to be a religious duty. *Reynolds v. United States,* 98 U.S. 244 (1879). *See also Gonzalez v. Roman Catholic Archbishop,* 280 U. S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929).

Furthermore, the test becomes *New York Times v. Sullivan,* 376 U.S. 254 (1964), that is, one cannot knowingly spread lies about another nor can he make defamatory

statements that constitute defamation in total disregard for their truth. *See also Gaillot v. Sauvageau,* 151 So. 2d 515, 518 (La. App. 4th Cir. 1963). For these reasons, the Writ of Certiorari should be denied.

D. The Louisiana Supreme Court's decision and the Fourth Circuit Court of Appeals' decision does not conflict with any federal appellate court decision.

Petitioners' argument that the Louisiana Appellate Court's and Louisiana Supreme Court's decisions hereinbelow conflict with *Hutchison v. Thomas,* 789 F.2d 392 (6th Cir.) cert. denied, 479 U.S. 85 (1986), is in error. This Court need only look at Page 393 of the Sixth Circuit's decision to know such argument is without merit. There the court states:

> Appellate's basic claim is that the United Methodist Church wrongfully expelled him from his ministry in the defendant East Ohio Conference by fraudulent or collusive or arbitrary application of the rules, laws and doctrinal statements known as *The Discipline.*

It is undisputed that Marvin Gorman tendered his resignation on July 16, 1986 and that the church formally dismissed him shortly thereafter. (See Motion for Contempt and/or Sanctions – Respondent's App. 6). As the Louisiana Court of Appeals for the Fourth Circuit concluded and now has been confirmed by discovery, Marvin Gorman has never complained about his dismissal nor has he ever asked for reinstatement. The petitioners' *Hutchison* argument does not apply. For these reasons, the Petition for Writ of Certiorari should be denied.

E. The Petitioners are only concerned with information that will be disclosed about defendants as opposed to any third parties.

Ironically, the defendants, who spread untrue statements, rumors and gossip about Marvin Gorman and others, make the argument that the plaintiff-respondent's lawsuit may invade the privacy of others, when in fact they have used the names of others in vain. As this Court will note in the Motion for Contempt and/or for Sanctions filed by Defendants-Respondents herein on January 10, 1988, in the trial court, the defendants' brought the Motion for Protective Order under false pretenses. (Respondent's App. 6). Accordingly, this Court should deny the Writ of Certiorari.

II. THE UNITED STATES SUPREME COURT DOES NOT HAVE JURISDICTION TO CONSIDER WHETHER OR NOT MARVIN GORMAN MINISTRIES, INC. STATED A CAUSE OF ACTION UNDER LOUISIANA LAW.

Rule 17 of the United States Supreme Court entitled "Considerations Regarding Review on Certiorari" does not permit this Court to review the Louisiana Supreme Court's decision to deny writs from the Louisiana Court of Appeals Fourth Circuit decision finding that Marvin Gorman Ministries, Inc. has stated a cause of action for defamation under Louisiana law.

If Plaintiff-Respondent is incorrect in the above proposition, it is undisputed that Louisiana law provides a corporation a cause of action for defamation. *See Economy*

Carpets Manufacturing and Distributors, Inc. v. Better Business Bureau of Baton Rouge, 361 So. 2d 234 (La. App. 1st Cir. 1978); *WHC, Inc. v. Tri-State Road Boring, Inc.,* 468 So. 2d 764 (La. App. 1st Cir. 1985). In the instant case, the Louisiana Court of Appeals for the Fourth Circuit held that Marvin Gorman Ministries, Inc.'s reputation was inextricably tied to the personal reputation of Marvin Gorman (Petitioners' App. 33-A). Furthermore, that under the circumstances, it is possible for Marvin Gorman Ministries, Inc. to be defamed by statements about Marvin Gorman individually, even if Marvin Gorman Ministries, Inc. was not mentioned by name in those statements. *Id. See also* W. Prosser, Hornbook of the Law of Torts, Section 111, P. 745 (4th Ed. 1971), and Restatement of Torts 2d, SCC. 564, comment (e).

For these reasons, Petition for Writ of Certiorari should be denied.

CONCLUSION

The Louisiana Court of Appeals for the Fourth Circuit properly reversed and remanded this case for trial. The Louisiana Supreme Court properly denied the Writ for Certiorari. Although these courts did not have the benefit of any discovery which is now forthcoming, the same will demonstrate at trial that the Louisiana Court of Appeals for the Fourth Circuit and the Louisiana Supreme Court were correct in allowing the plaintiff-respondent his day in court.

Plaintiff-Respondent further requests this court enter sanctions under Rule 11 of the Federal Rules of Civil

Procedure against the defendants-petitioners herein for the reasons stated in the Motion for Contempt and/or for Sanctions presently pending the District Court of Orleans Parish, Louisiana. (Respondent's App. 6).

Respectfully submitted,

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STATEMENT FROM JIMMY SWAGGART CONCERNING MARVIN GORMAN

There will be no names given concerning guilty parties or innocent victims related to the incidents set forth in this statement. The names are fairly well known and can be supplied upon request. To save embarrassment, no names except those of witnesses will be used in this statement.

In 1981, Frances Swaggart began receiving telephone calls from a lady who attended Marvin Gorman's church. The lady involved has been and is a long time friend of ours. Her family is quite prominent in First Assembly.

Over a series of several weeks, this lady began to relate to Frances events leading into an immoral affair involving Marvin Gorman.

I personally questioned the lady very closely concerning these events and I feel that she was truthful in all accounts given.

This affair lasted approximately two years. Marvin Gorman would purchase gifts and give them to her. They would park on side roads or in remote places for long periods of conversation. All of this was done with no chaperon nor anyone else being present.

The affair gradually evolved into "petting" and "kissing" and finally concluded in a motel room in approximately 1981.

"Petting" and "kissing" were involved in the motel experience. In the conversation that was included in the incident, the lady said the Marvin Gorman applied heavy pressure on her involving a sexual affair. His statement

was, "I can cover it and no one will ever know." She states that she jumped up and ran out of the room. The following should be added to this scenario.

For several months before this situation was stopped, her husband (a former deacon at First Assembly), suspecting something was going on, had the telephone tapped. He recorded many hours of conversation between his wife and Marvin Gorman over a period of several months. He is satisfied that his wife is telling the truth.

There seemed to be no adultery involved, even though Marvin Gorman pressured her greatly to engage in same but, as stated, she ran out of the room.

A short time after her relating this incident to me by telephone, I saw Marvin in an airport terminal. I asked him to come and see me in Baton Rouge when he had some time. A few weeks later, he came to my office in Baton Rouge.

In the privacy of my office with only the two of us present, I confronted him with the information I have just stated.

He broke down, started to weep and admitted it had happened with one exception. He denied any effort to try to get her in bed. Of course, it must be understood that, according to her testimony, they were sitting on the bed at the time.

She vows vehemently that a strong effort was made by him to get her in bed for a sexual affair.

As we discussed this in my office, I told him it would be hard to believe that any man would take a woman to a

motel room, engage in "petting" and "kissing" and give no thought to going to bed with her.

I asked him if there had been other situations involving other women and he vowed that this was the only one. However, it must be understood that at this same time, he was, even then, having an affair with the second woman (an Assemblies of God pastor's wife). So, in effect, he lied to me.

I told him that I would not say anything to Brother Janway or Brother Zimmerman (then the General Superintendent) if I was assured that the matter would stop immediately. I felt I had a way to monitor the situation through the woman in question. He assured me the matter would end then and there and I feel it did end. However, it must be added once again, the affair with the other woman was even then going on and continued for nearly a year after this particular confrontation. (This was learned after the fact.)

While at General Council in San Antonio, Bob Schmidgall, who was to become an Executive Presbyter at this particular Council called me.

He stated that Marvin Gorman had received a strong vote for the position of General Superintendent. The possibility definitely existed that Marvin would be elected Assistant General Superintendent. Brother Schmidgall said this.

"I have heard that you have some information respecting an immoral situation concerning Marvin Gorman. If you do, I need to know about it."

I hesitated and then went ahead and told him what I have related above. I never saw Brother Schmidgall after that and do not know what transpired. However, I do know that Marvin Gorman removed his name relative to this particular position but was re-elected as Executive Presbyter of the Assemblies of God.

On Thursday, July 10, 1986, Bill Treeby, a Board member of Jimmy Swaggart Ministries and a member of Lakeview Assembly of God church in New Orleans came to my office on business concerning J.S.M.

In my office, he said to me, "There has been a problem in New Orleans. An Assemblies of God pastor's wife has committed adultery with an Assemblies of God pastor." Oddly enough, I did not ask him who it was and he did not, at that time, tell me.

The following Sunday morning I preached at Family Worship Center. Immediately after the service, we left to go to San Jose, Costa Rica to dedicate a church. Bill Treeby and his wife, Nancy, accompanied us. Bill had been involved in the Costa Rican work and wanted to see the church.

On the plane, he told us the names of the pastor's wife and the corresponding party. That party was Marvin Gorman, he said.

When we arrived in San Jose, Bill called his pastor, Mike Indest of Lakeview Assembly in New Orleans. I understand the following is what transpired respecting Mike Indest and Bill Treeby.

The woman in question (the second woman) came to Mike's home for counseling. These people had been long

time friends. I understand Mike's wife and children were present. At any rate, the woman confessed to Mike several immoral affairs, one of them involving Marvin Gorman.

I talked to Mike briefly on the phone from San Jose. The conversation basically included the events up to that particular time.

We returned to Baton Rouge from San Jose on Monday morning. I am told that some time on Tuesday afternoon, the pastor whose wife had committed the offense confronted Marvin Gorman in Marvin's office. After being informed that Mike Indest was a party to this knowledge, Marvin called Mike Indest. He asked if Mike would come to his office. I understand that Mike requested that Marvin come to his office instead. This was done.

About 5:30 PM that Tuesday afternoon (July 15, 1986), I was still at my office when Mike called to tell me that Marvin Gorman was in his, Mike's office. Marvin was accompanied by David Savage. Mike said to me, "He has confessed to everything." Mike said he wanted to come to my office. He said he did not feel qualified to deal with this situation any longer and it needed to be placed in someone else's hands.

I understand the reason he did not contact Brother Janway was because Brother Gorman asked him not to. At any rate, Mike requested that they come to Baton Rouge.

I acquiesced to this but requested that Bill Treeby be included because Mike, realizing the enormity of the

situation, had confided in Bill from the very beginning. (Bill Treeby is an Attorney-at-Law with the prestigious legal firm of Stone, Pigman in New Orleans.)

They consented to this and arrived at my home in Baton Rouge around 8 PM. Those at this meeting were myself, Jim Reutz, Bill Treeby, Mike Indest, Marvin Gorman and David Savage. Mike Indest briefly related to me what had taken place.

I then turned to Marvin Gorman (we were in my study) and asked him if this was so. He said, "Yes."

He basically related the same thing Mike Indest had. The situation had continued for nearly four years. The names of motels were provided by the woman in question to Mike Indest and even some dates. Marvin admitted, in front of all those present, that this was true.

I then asked Marvin if there had been any other women involved. He assured me no other women were involved. I said to him, "Marvin, I believe there have been women involved all the time since you were D-CAP up until this present hour. Why don't you, at this moment, come clean about everything and make a total confession?"

He vehemently vowed that there were no others involved. Then I said this to him.

"These are the same, identical words you told me when I talked to you about the first woman in 1981. You vowed then that there were no other women involved and at that very time you were involved with this particular woman. You lied to me then and I believe you are lying to me now."

He was forced to admit that he had lied back in 1981, but he again remonstrated that no other women were involved.

I asked him what he was going to do. The room became very heavy with silence. No one said anything. Marvin never answered.

I walked to my desk, picked up the Bible and turned to I Timothy 5:20. I told him to read it. He did so out loud. This particular passage relates to an elder who has sinned.

He, still, said nothing.

I, then rephrased my question and asked, "What should you do?"

Once again the room became very heavy with silence and he still did not answer.

After a considerable period of time, I stated to him, "You are going to have to call Brother Carlson and Brother Janway."

He then pleaded to be given a period of time to get the finances of the church in order. He said, "Men will be in the church offices tomorrow relative to making a loan to the church of some $16 million. I must be allowed to get this loan in order."

I told him it would not be right for these men (whomever they were) to make a loan to a church without information of this magnitude being given to the lending agency. To carry forth with this would be tantamount to fraud.

Everyone in the room agreed with that. I further stated to him, "You must tell the lending agency about this change in the church. If they still want to loan the money, that is their business, but they must know about this."

No more was said concerning the loan. Marvin then said to me, "I will call Brother Carlson and Brother Janway, but first of all, I want to tell my family."

We were concerned for him; consequently, I had Jim Rentz drive his car back to New Orleans while Bill Treeby and Mike Indest went back in their car. I took Marvin and David Savage in my car.

On the way to New Orleans, Marvin asked about a woman who had worked for him and then had worked for us for a short time. He wanted to know if she had told me that they (she and Marvin Gorman) had had an affair. I told him she had not told me this. It is my personal belief that this was another case involving an immoral affair; however, I say this without proof.

We had had prayer together in my study and when we all arrived at David Savage's church in New Orleans, we had prayer together again and Marvin Gorman left.

This is the sum total, as best I can remember, of my involvement concerning the affairs in question respecting Marvin Gorman.

/s/ Jimmy Swaggart

CIVIL DISTRICT COURT FOR
THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 87-5289 DIVISION "K" DOCKET NO.

DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, *IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, CASE NO. 04024-K* AND *IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., CASE NO. 04025-K*

VERSUS

JIMMY SWAGGART AND
JIMMY SWAGGART MINISTRIES, INC., ET AL

FILED:_____ _____
DEPUTY CLERK

MOTION FOR CONTEMPT AND/OR FOR SANCTIONS

NOW INTO COURT, through undersigned counsel, comes plaintiff herein, DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, *IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, CASE NO. 04024-K* AND *IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., CASE NO. 04025-K,* pursuant to Article 224 of the Louisiana Code of Civil Procedure, 863 of the Louisiana Code of Civil Procedure (its predecesor and as amended effective January 1, 1989), and pursuant to 3.1, 3.2, 3.3, and 3.4 of the Supreme Court of Louisiana Rules of Professional Conduct as effective January 1, 1987, and moves this court to find the defendants in this case and their attorney in contempt and order sanctions including, but not limited to, a fine, attorney's fees and costs of plaintiff's counsel.

The following will demonstrate during the past two years, the modus operandi of defendants and their counsel herein has been to harass plaintiff, increase costs of litigation, cause unnecessary delay, hoping to eventually deprive plaintiff, and the real parties in interest, Marvin Gorman and Marvin Gorman Ministries, Inc., their day in court. The motion is directed to all defendants but is focused primarily on the defendants, Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., Frances Swaggart, William Treeby, Michael Indest, Lakeview Christian Center and their attorneys.

FACTS

Marvin Gorman and Marvin Gorman Ministries, Inc. filed suit in March, 1987, naming a number of defendants. The Petition was later amended to allege a conspiracy among the defendants to ruin Marvin Gorman and Marvin Gorman Ministries, Inc.

On April 27, 1987, the defendants, Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., William Treeby, and Don Brankel, through their attorneys of record, filed Exceptions of Improper Cumulation of Action, Misjoinder of Parties, No Right of Action and No Cause of Action. On April 28, 1987, the defendants, Michael Indest and Lakeview Christian Center, through their attorneys, filed Exceptions of Lack of Subject Matter Jurisdiction and Improper Venue, Improper Cumulation of Action, Improper Joinder of Parties, Prematurity and an Exception of No Cause of Action. Although the Stone, Pigman firm was co-counsel for Michael Indest, Lakeview Christian Center and William Treeby, Stone Pigman did not

raise subject matter jurisdiction at this time for Jimmy Swaggart and Jimmy Swaggart Ministries, Inc., William Treeby and Don Brankel.

All remaining defendants subsequently filed their Exceptions asserting in essence the same grounds raised by other defendants.

On May 1, 1987, apparently after a meeting among all counsel for all defendants, Phillip Wittmann of the Stone, Pigman firm mailed a letter to all counsel of record (a copy of May 1, 1987 letter attached as Exhibit No.1). Said letter indicates the positions of the various parties with their insureds and a suggestion to eliminate duplication of efforts since eighty (80%) of the work performed by the Stone, Pigman firm was inuring to the benefit of all the defendants, while only twenty (20%) percent of their effort was directed toward individual defenses. In Paragraph 1 of Page 2 of said letter, counsel for the defendants felt, "beyond our wildest dreams" that the Exceptions that had been filed or would be filed could be sustained.

Shortly thereafter, plaintiffs filed a motion to take video depositions of Jimmy Swaggart and other defendants. An opposition was filed on May 14, 1987. After weeks of arguing, an agreed order was entered on the video depositions stating that the party taking the deposition would pay for the videotapes and also pay for a stenographer present and that the court reporter would be responsible for filing the videotapes with the Clerk of Court within 24 hours of completion of the deposition. The Order did not address audiotapes and the defendants

wrongfully detained the court reporter's audiotapes following Jimmy Swaggart's deposition.[1]

The defendants also acted in bad faith with regard to the Protective Order sought from and entered by this court on June 8, 1987. The defendants indicated that numerous women would be implicated as having adulterous affairs with plaintiff and desired that these women be protected from public exposure of their acts. Plaintiff had admitted to adultery with a single woman. Defendants had indicated in the slanderous and malicious remarks which gave rise to this action that they had signed statements from numerous women who claimed he committed adultery with them. It was for the protection of these women that the Protective Order was entered.

Plaintiff, in preparing his case for trial, naturally has sought through discovery to learn from defendants the identities of this large number of women. The defendants have, however, produced no statements nor identified in the depositions which have been taken a single woman who made a statement claiming that plaintiff committed adultery with her (with the exception of the one to which plaintiff has admitted). The defendants have by such methods obtained a Protective Order upon false representations as to the existence of testimony which has not been full in coming and which has never existed.

In discovery the intent of defendants has become apparent. After spending months defaming plaintiff and accusing him of numerous adulterous relationships to the public, they have sought a Protective Order to keep secret the fact that there was only the one such relationship

which plaintiff had admitted to, thus keeping plaintiff from clearing his name.

On or around May 11, 1987, plaintiffs sent their first Request for Production of Documents and First Set of Interrogatories to all defendants.

On May 15, 1987, at the hearing regularly scheduled by this court on all the Exceptions of the parties, Mr. Peter Feringa showed up at the courtroom with Mr. William Treeby and hand delivered his Supplemental Memorandum on the exceptions of Lack of Subject Matter Jurisdiction, along with a copy of the By-Laws and Constitution of the Assemblies of God and initiated the argument that the information disclosed by the assemblies of God about Marvin Gorman (whether it was true or not), and other ordained ministers including, but not limited to, Michael Indest, William Treeby, Lakeview Christian Center and others was in furtherance of Assemblies of God interpretation of biblical doctrine, particularly Matthew 18, Versuses 15 - 17. Mr. Feringa offered into evidence the By-Laws and Constitution of the Assemblies of God, as well as the annual ordination papers of Reverend Marvin Gorman that Gorman had signed as an Assemblies of God pastor agreeing to abide by the by-laws and constitution of Assemblies of God. However, Mr. Feringa was unable to point to any provision in the By-Laws and Constitution that says that the Assemblies of God believe what he was verbally representing their belief to be, particularly Matthew 18, Versuses 15 - 17. Furthermore, Mr. Feringa argued that an Assembly of God pastor who has moral charges brought against him cannot resign.

On June 8, 1987, this court entered a Judgment denying many of the defendants' Exceptions, but granting the Exception for Lack of Subject Matter Jurisdiction filed by Mr. Peter Feringa in behalf of his clients, Michael Indest and Lakeview Christian Center.

On or around June 10, 1987, the remaining defendants joined in the Exceptions for Lack of Subject Matter Jurisdiction. The court can note on Page 4 of the reply memorandum filed by Stone, Pigman on behalf of Jimmy Swaggart, Jimmy Swaggart, Ministries, Inc., William Treeby and Don Brankel that Matthew 18, Versuses 15 - 17 was represented as authority justifying the actions of the defendants against Marvin Gorman and Marvin Gorman Ministries, Inc.

The movers contend that the defendants and their counsel knew at the time in which these Exceptions were filed that neither the reading nor mailing of their statements were sanctioned by the Assemblies of God and that the argument they were making was proposterous.[2]

On or around August 31, 1987, the court sustained all of the Exceptions for Lack for Subject Matter Jurisdiction filed by the defendants and declared all other Exceptions moot. It was obvious that the court believed the representations of counsel were in good faith, that the wrongful conduct of the defendants towards Marvin Gorman was in furtherance of church doctrine and church beliefs. As indicated hereinabove, the evidence indicates to the exact contrary. The defendants were successful in preventing any discovery depositions taken prior to the court's ruling on the Exceptions.

On or around June 10, 1987, the defendants, Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., William Treeby and Don Brankel, filed a response to the plaintiff's First Set of Interrogatories and on or around June 15, 1987, filed a response to plaintiff's first Request for Production of Documents. Although the defendants have failed to comply with the discovery requests of the plaintiff in a number of instances, those arguments will be reserved later for a Motion to Compel. However, one particular instance that must be addressed in light of the recent ex parte motions requiring plaintiff to post a cost bond is plaintiff's interrogatories propounded to the defendants back in 1987.

Plaintiff's interrogatories asked that the respondents provide names, addresses and telephone numbers of each every individual whom defendants know to have any knowledge of facts or circumstances pertinent to this litigation. This question was also followed by an identical question except limited to witnesses intended to be called at the trial of this case. *In both responses, the defendants, Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., William Treeby and Don Brankel, through their counsel, objected stating that the request was overbroad and then instructed plaintiff to obtain this information through depositions if the plaintiff so desires. As is obvious, the defendants were attempting to escalate expenses, not comply with discovery, contrary to what they represented to the court Thursday morning, January 5, 1989.*

The plaintiff appealed this August 31, 1987 dismissal of the entire case and filed briefs with the Louisiana Court of Appeals for the Fourth Circuit. The defendants responded to plaintiff's appeal and once again argued

what had been argued before the trial court that the defendants' conducts was in furtherance of the Assemblies of God By-Laws and Constitution in interpreting scripture, particularly Matthew 18, 15 - 17. In keeping with the pattern of harassment, Mr. Peter Feringa, counsel for Michael Indest, Lakeview Christian Center and apparently undisclosed counsel for William Treeby filed an Exception of No Right of Action in the Fourth Circuit and hand delivered the undersigned counsel a copy with the memorandum brief 15 minutes prior to oral arguments on March 3, 1987. Counsel's argument was that between the time of dismissal and the time of oral argument, Marvin Gorman and Marvin Gorman Ministries, Inc. had taken bankruptcy and the trustee had not been substituted as the proper party plaintiff. However, the trustee, Mr. David Adler, was present in court having already given instructions to the undersigned to act in his behalf. The Fourth Circuit heard the arguments, the trustee was substituted and Mr. Feringa's Exception was overruled. The Fourth Circuit, on April 22, 1988, reversed and remanded the case to trial. The defendants took writs to the Louisiana Supreme Court and made the same arguments expressed hereinabove. Writs were denied. The defendants, Jimmy Swaggart and Jimmy Swaggart Ministries, Inc., and the defendant, William Treeby, have now filed a Petition for Writ of Certiorari before the United States Supreme Court, making the same argument as made before the trial court, the Fourth Circuit and the Louisiana Supreme Court. (Although the District Court's Protective Order does not have jurisdiction over the United States Supreme Court, in fairness to counsel opposite, the undersigned is putting all defense counsel

on Notice that the transcript of Jimmy Swaggart's deposition and Cecil Janway's deposition will be filed with the United States Supreme Court in conjunction with the Memorandum in Opposition to the Petition for Certiorari and the Motion for Sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure.)

During the deposition of Jimmy Swaggart, Denise Pilie' provided co-counsel for the plaintiff approximately six or eight documents which were requested in plaintiff's document request which were handed to plaintiff (Reverend Gorman) while the undersigned continued to question Mr. Swaggart. Shortly thereafter, Mr. Wittmann said there was a mistake in the production of these documents in that they had not been stamped "confidential" as required by the court order and asked that they be returned temporarily for stamping during the next break. In the meantime, plaintiff and his attorneys perused the documents and made editorial markings thereon.

During the following break, Mr. Wittmann again asked for the documents so that they could be stamped "confidential." The undersigned delivered the documents to Mr. Wittmann for such purpose who then handed them to Ms. Pilie. Thereupon, Ms. Pilie announced that the documents should never have been produced and then refused to return them, indicating that there was never any intent to get the documents merely to stamp them "confidential." After some discussion and the persistent refusal of Ms. Pilie to return the documents, it was pointed out that certain editorial marks has been made on them and if said papers were not to be returned, they should be destroyed. At this time, Ms. Pilie destroyed the documents.

Later in the deposition, Mr. Wittmann and Ms. Pilie acknowledged that certain of the documents should be produced and produced new copies of them. They refused, however, to produce copies of the remainder of the documents which they had taken back under false pretenses.

On December 20, 1988, during Jimmy Swaggart's deposition, Swaggart's counsel apparently reviewed documents from Cecil Janway's counsel and provided the same to plaintiff's counsel during deposition. The undersigned immediately questioned why these documents, as well as any other documents which would have been responsive to the subpoena duces tecum were not produced in Cecil Janway's deposition on December 15. Counsel for Cecil Janway responded by saying there had not been a call for a production, which was patently false, but obviously of a deliberate intent by the defendants to deprive plaintiff of his discovery, and to delay the litigation and increase the costs of plaintiff's litigation.

On the afternoon of January 4, after counsel for plaintiff, Hunter Lundy, had driven to New Orleans and counsel for plaintiff, Tomy Frasier, had left Tulsa to fly to New Orleans, Hunter Lundy received a call from his office with instructions to call Ross Buckley. On the afternoon of the 4th in New Orleans, Mr. Lundy called Mr. Buckley and was told that Mr. Buckley was filing a Motion for Protective Order as to documents requested and was also told by Mr. Buckley that Peter Feringa had filed a Ex Parte Motion for Cost Bond. Once again, this was just consistent with Mr. Feringa's pattern of not affording the plaintiff's counsel the courtesy of a telephone call, a letter or any indication of his intentions.

CONCLUSION

For each and all the foregoing reasons stated above, plaintiff requests that an order of contempt be issued against the defendants and their counsel and sanctions against the defendants in the amount of FIFTY THOUSAND AND NO/100 ($50,000.00) DOLLARS for the unnecessary time and expenses incurred by plaintiff's counsel in preparing briefs and arguments based upon the Exceptions for Lack of Subject Matter Jurisdiction, Motions for Protective Order, and remaining Exceptions which the defendants' counsel knew themselves to be untrue and without merit. Furthermore, said request of $50,000.00 is for reimbursement of unnecessary expenses and time spent by plaintiff's counsel in travel, delay, and duplication of efforts due to defendants' and their attorneys' conduct, harassment and actions taken for purposes of delay.

Respectfully submitted,

LUNDY & DWIGHT

BY: /s/ Hunter W. Lundy
HUNTER W. LUNDY
P. O. Box 3009
Lake Charles, LA 70602
(318) 439-0707

TOMY DEE FRASIER
FRASIER & FRASIER
1700 S.W. Boulevard
Tulsa, Oklahoma 74101
(908) 584-4724

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been forwarded to all counsel of record by depositing a copy of the same in the United States mail, postage prepaid and properly addressed.

Lake Charles, Louisiana, this 9 day of January, 1989.

/s/ Hunter W. Lundy
HUNTER W. LUNDY

PLEASE SERVE:

All defendants through
their attorneys of record

FOOTNOTES

[1] On the completion of the first day of Jimmy Swaggart's testimony, December 20, 1988, the court reporter handed the videotapes and audiotapes to Ms. Denise Pilie' for purposes of safekeeping overnight in the Stone, Pigman safe. Upon commencement of the deposition on December 21, 1988, Ms. Pilie' and Mr. Wittmann advised all parties in the room that audiotapes should not be used over the objection of the court reporter and plaintiff's counsel.

It is represented that there was in excess of 20 lawyers in the room, many of which were talking and objecting at the same time. In many instances, Mr. Swaggart would respond to questions before they were completed and would be talking at the same time as the questioner, his lawyer and others. The court reporter represented that the audiotapes were necessary to confirm an accurate transcript. Contrary to the undersigned's and court reporter's request, Denise Pilie' kept the audiotapes and refused to turn them to the court reporter and instead went and filed them with the clerk. The court reporter's letter objecting to Stone, Pigman's conduct was mailed to Stone, Pigman on December 26, 1988, (copy of which is attached as Exhibit No. 2).

[2] In the deposition of Jimmy Swaggart, taken on December 20 and 21, 1988, the undersigned asked Mr. Swaggart if he authored and mailed the August 20, 1986 statement to which he replied "yes". The undersigned further asked if Mr. Swaggart authored the five-page statement about Marvin Gorman and attached it to his August 20 letter when he mailed it out. The witness replied "yes". When Mr. Swaggart was asked if he had ever made a statement that the reason for disclosing Marvin Gorman's sin was on the basis of scripture taken out of Matthew to disclose the sin to the universal church, his reply was "I have never heard of such a statement." Swaggart went on to say that he did not recall ever having made a statement such as that and that he did not recall anyone ever having made such a statement in his behalf. The undersigned questioned him further and said, "Do you believe it is the proper thing to do to expose your bretheren?" He said "no". Jimmy Swaggart went on to say that his belief was out of Genesis 9,

that it was better to cover the sin of brother than to destroy the work of God. Amusingly, Swaggart said that his August 20, 1986 letter was fulfilling Genesis Chapter 9.

When Mr. Swaggart was asked if he had personally ever disciplined a minister, he said that he had never disciplined a minister. In asking Mr. Swaggart why he wrote the August 20, 1986 letter, his reply was that he saw Jim Bakker and Mama Goodman on the PTL Club talking about the church in New Orleans and how this evangelist, who they did not identify by name, was railroading Marvin Gorman. Apparently, Swaggart's August 20 letter and statement about Marvin Gorman was something Swaggart wrote in defense of something being said on the PTL network; that it was not church discipline and certainly was not in furtherance of scripture out of Matthew.

The deposition of Jimmy Swaggart was noticed for December 20, 1988, in the offices of Stone, Pigman and without a courtesy call from any defense lawyer, the plaintiff's lawyers learned after proceeding to the deposition that Stone, Pigman and Chaffe, McCall had changed the deposition location to the Chaffe, McCall office in the Energy Centre.

On December 15 and 16 of 1988, the undersigned took the deposition of Mr. Cecil Janway, the District Superintendent to the Louisiana District Council of Assemblies of God. The undersigned asked Mr. Janway if a minister is going to be disciplined, does a complaint have to be made against him and Mr. Janway responded, "Right, in writing." In further question, Mr. Janway was asked if he was present in Reverend Gorman's home on July 16, 1986. Janway's response was "correct". The undersigned then asked if that was when Reverend Gorman handed him his fellowship card. The response was "correct". He was asked if that is the night that Reverend Gorman resigned from the church. Mr. Janway's reply was "correct". The undersigned then asked for Mr. Janway to confirm that there had not been a complaint in writing made against Reverend Gorman. His response was correct. He was then asked if Reverend Gorman tendered his resignation on the night of July 16, 1986, and Mr. Janway response was "as a pastor, correct" and that he tendered his fellowship card as a member of the Louisiana District Council and General Council of Assemblies

of God. His response was "correct". Later in the deposition, Mr. Janway tried to turn it a round and say that Reverend Gorman could not resign from the church nor from the Assemblies of God because he made a confession and that he was not sure what he was resigning from and then the undersigned came back and asked if Marvin Gorman did not have a fellowship card with the Assemblies of God, with the General Council and Louisiana District Council, then he could not pastor an Assemblies of God Church, could he? Janway replied, "Well, basically no."

When Janway was asked if he was consulted in any matter with respect to the statement that was read to the First Assembly of God Church on July 20, 1986, Mr. Janway's response was "I don't know." (The July 20 statement will be filed in support of this motion within seven (7) days herein in accordance with the Protective Order since the same was produced for the first time pursuant to discovery.)

In Cecil Janway's deposition, he testified that the First Assembly of God Church in New Orleans invited him and Forrest Hall to attend a church business meeting on September 2, 1986, and to read the statement to the church. Although he refused to agree to it, he did confirm the validity of minutes of a meeting of August 30, 1986 where he, Forrest Hall and Carl Miller, of the First Assembly of God, agreed that they would take their notes and that Carl Miller and Allen McDonnel would take them to Bill Treeby to edit so that it would be most effective for its presentation on the night of September 2, 1986. Cecil Janway testified that his September 2, 1986 statement was drafted after having reviewed the July 20, 1986 statement, the August 20 letter of Jimmy Swaggart with the attached statement about Marvin Gorman, as well as a volume of other correspondence from Michael Indest, etc. Janway also admitted that the September 2 statement contained language extracted verbatum from some of this correspondence. In Cecil Janway's deposition, he indicated the reason they mailed out the September 2, 1986 statement around the country was because people were calling and asking about Reverend Gorman and what was going on in the Assembly of God in New Orleans so therefore, he mailed the September 2, 1986 statement. Nowhere in his deposition did Cecil Janway state that he

mailed it out because he was following the By-Laws and Constitution of the Assemblies of God or because he was following the Assemblies of God's scriptural interpretation of Matthew 18, Versuses 15 - 17. (The undersigned counsel is putting all counsel on notice that the portion of the transcript of the deposition of Jimmy Swaggart which is available will be filed in the record along with Cecil Janway's deposition within seven (7) days in accordance with this Court's Protective Order.)

EXHIBIT NO. 1

STONE, PIGMAN, WALTHER,
WITTMANN & HUTCHINSON
COUNSELLORS AT LAW

546 CARONDELET STREET

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May 1, 1987

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*A Professional Corporation

OUR FILE NUMBER
34,615

To: All Counsel of Record
Re: Marvin Gorman and Marvin Gorman Ministries, Inc. v. Jimmy Swaggart, et al.

Dear Ladies and Gentlemen:

We had agreed to make a recommendation to our defense group regarding the allocation of costs and expenses, including legal fees, incurred in this case. As you know, we have seven separate insurers, insuring fifteen separate defendants, with some insurers having as many as eight separate insureds. At present we are appearing as co-counsel with Martin Hunley for the Reverend Jimmy Swaggart, Jimmy Swaggart Ministries, Don Brankel and Bill Treeby. We are also acting as co-counsel with Pete Feringa's firm for Lakeview Christian Center, Bill Treeby, and Mike Indest.

USF&G has the largest number of individual insureds and at the moment has three separate law firms defending this case. Jim Murphy is representing the Louisiana District Council of the Assemblies of God, Inc. and Cecil Janway. Wood Brown is representing The First Assembly of God. Waldo Risner and Allan McDonnel, and Pete Feringa is representing Lakeview Christian Center, Mike Indest and Bill Treeby.

Preferred Risk, represented Larry Mann, insures Canal Street Assembly of God and Tom Miller; Jerry Weigel is representing the General Counsel of Assembly of God and the Reverend Carlson through his client, Liberty Mutual. We are all trying to avoid getting in each other's way, and, as I mentioned at our earlier meetings, we have no interest in interfering with anyone's attorney/client relationship with any insurance carrier. However, we have been requested to represent a number of

the individual defendants and are doing so now in the instances enumerated above. Unavoidably a great deal of our work is inuring to the benefit of all and we think it is appropriate to provide for an allocation of joint defense costs among the various insurers in this case. We have a number of depositions already scheduled and more will undoubtedly be forthcoming (unless our exceptions are successful beyond our wildest dreams) and the discovery requests made so far by the plaintiff's attorneys indicate that they are prepared to do a little work as well.

While it is difficult to come up with a precise formula for sharing of costs and fees, I do believe that it will be in the best interests of all of the defendants to allow our firm to assume the laboring oar and for each of the insurers to pick up a portion of the expenses that would otherwise be borne solely by Bill Treeby's insurers. In this way, individual counsel for the insurers could supervise and review what is being done in the joint defense, while reserving any individual defenses they may wish to pursue at their own expense. With the number of insurers involved, the allocation of joint defense costs will not be that burdensome as to any one company.

It seems to me that probably 80% of the work that we are doing will inure to the benefit of all defendants, while only 20% of our effort be directed toward individual defenses. What I suggest is that the 80% be divided seven ways among USF&G, St. Paul, ALAS, Liberty Mutual, Preferred Risk, State Farm, and Aetna. This will mean that each insurer will pay about 11½% of the joint defense fees.

The only other way to proceed it seems to me would be to divide the cases among the various attorneys individually so that one firm will handle certain depositions, while another firm handled other depositions, interrogatories, etc. However, the case really isn't big enough to warrant that approach and I think that approach will be more costly and less effective than an agreement along the lines that I am suggesting.

If anyone is uncomfortable with our firm assuming the lead role, we would be perfectly happy to have one of the other lawyers in our group assume the role as lead counsel, with us assuming a secondary role on behalf of our individual clients, provided the clients don't object. In those cases in which insurers have reserved their rights, the clients have expressed a desire to have this firm represent them. The point is, that all of us cannot defend this case all of the time without having the defense costs exceed any verdict that could reasonably be anticipated.

Please give this matter your prompt attention and be prepared to discuss it at our next meeting.

With kindest regards, I remain

Sincerely,

/s/ Phil Wittmann
Of STONE, PIGMAN, WALTHER,
WITTMANN & HUTCHINSON

PAW/ker

SOUTHWEST REPORTERS
P O BOX 3226
420 PUJO STREET (70601) EXHIBIT NO. 2
LAKE CHARLES, LA 70602-3226
318/433 5672

DECEMBER 26, 1988

DENISE PILIE' &/or PHILLIP WHITTMANN
STONE, PIGMAN FIRM
546 CARONDELET STREET
NEW ORLEANS, LA 70130-6097

RE: GORMAN VS SWAGGART

Dear Mr. Whittmann &/or Ms. Pilie',

This correspondence will serve to confirm our anticipated conversation of December 27, 1988 as I expect to make the call to further confirm this letter and reiterate our earlier request for the audio tapes in Reverand Swaggart's deposition.

As explained, the audio tapes are to be used by the reporter in proofing the transcript portion of the deposition. The audio tape is simply a tool to ensure an accurate translation of the testimony given during the deposition.

Upon receipt of same, we will commence transcribing the deposition.

For the record I feel the necessity to state that I am extremely disappointed in the manner which the tapes were obtained. We were advised that the tapes would be put in your safe for the evening for "safekeeping". The tapes were not returned the following day.

As an officer of the court, our sole interest is to provide all parties with a verbatim record as we have absolutely no interest in the ultimate outcome of this case.

We have executed a none-disclosure statement at your request and we fully intend to abide by same. I requested a copy of the executed statement at the time of signing same; however, this has not been provided to us at the time of this writing.

Your earliest attention to this request will be greatly appreciated.

Yours Truly,

/s/ Nat Douget
NATHAN DOUGET
Certified Shorthand Reporter
Legal Video Technician

Mr. Hunter W. Lundy
Lundy and Dwight
One Lakeside Plaza
Lake Charles, LA 70601

cc: All counsel of record (please see attached)

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 87-5289 DIVISION "K" DOCKET NO.

DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, *IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, CASE NO. 04024-K* AND *IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., CASE NO. 04025-K*

VERSUS

JIMMY SWAGGART AND
JIMMY SWAGGART MINISTRIES, INC., ET AL

FILED:_____ _____
DEPUTY CLERK

STATE OF LOUISIANA

PARISH OF CALCASIEU

AFFIDAVIT

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the aforementioned state and parish, did personally appear, HUNTER W. LUNDY, who, after being duly sworn, did depose and say that:

He is co-counsel of record for David Adler, Marvin Gorman and Marvin Gorman Ministries, Inc.;

He, in conjunction with co-counsel, drafted the Motion for Contempt and/or Sanctions and the Memorandum in Support thereof; and

He is attorney for the plaintiff that questioned the defendants, Cecil Janway and Jimmy Swaggart, on December 15 and 16, 1988, and December 20 and 21, 1988, respectively and that the statements made with respect to their testimony in the Motion for Contempt and/or for Sanctions and in the Memorandum Brief in Support thereof are true to the best of his memory, knowledge and belief, as well as the allegations made in the Motion and Memorandum.

/s/ Hunter W. Lundy
HUNTER W. LUNDY

SWORN TO AND SUBSCRIBED before me, Notary, this 9 day of January, 1989, at Lake Charles, Louisiana.

/s/ David F. Dwight
NOTARY PUBLIC

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 87-5289 DIVISION "K" DOCKET NO.

DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, *IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, CASE NO. 04024-K* AND *IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., CASE NO. 04025-K*

VERSUS

JIMMY SWAGGART AND
JIMMY SWAGGART MINISTRIES, INC., ET AL

FILED:_____ _____
DEPUTY CLERK

MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR CONTEMPT AND/OR FOR SANCTIONS

(Filed January 10, 1989)

Article 224 of the Louisiana Code of Civil Procedure reads in part:

> A constructive contempt of court is any contempt other than a direct one. Any of the following acts constitutes a constructive contempt of court:
>
> (2) willful disobedience of any lawful judgment, order, mandate, writ or process of the court;
>
> (4) deceit or abuse of the process or procedure of the court by a party to an action or proceeding or by his attorney; and
>
> (10) any other act or omission punishable by law as a contempt of court or intended to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority, and which is not a direct contempt.

Prior to January 1, 1989, Article 863 of the Louisiana Code of Civil Procedure read as follows:

> Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. Any party that is not represented by an attorney shall sign his pleadings and state his address..
>
> Pleadings need not be verified, or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney constitutes a certificate by him that he has read the pleadings; that to the best of his knowledge, information and belief, there is good ground to support it; and that it is not interposed for delay.

Article 863 as amended effective January 1, 1989, reads in part as follows:

> (b) Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney or party shall constitute a certification by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact; that it is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for an improper purpose, such as to harass or to cause unnecesary delay or needless increase in the cost of litigation.
>
> (d) If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the

filing of the pleading, including a reasonable attorney's fees.

Article 3.1 of Louisiana Supreme Court Rules of Professional Conduct, effective January 1, 1989, reads as follows:

Rule 3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so in good faith, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceedings as to require that every element of the case be established.

Article 3.2 reads as follows:

Rule 3.2 Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Article 3.3 reads as follows:

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) conceal or knowingly fail to disclose that which he is required by law to reveal; however, if a lawyer discovers that his client has perpetrated a fraud on a tribunal, shall promptly call on his client to rectify same and, if the client shall refuse to do so or be unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to

be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a)(1) and (3) continue to the end of the hearing or proceeding. The duties stated in paragraph (a)(2) and (4) are limited in time and are subject to the provisions of Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts ~~known~~ to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Article 3.4 reads as follows:

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the crediblity of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

As better stated in the Motion and attachments, as well as revealed by the record itself, the defendants filed a volume of Exceptions in this case which apparently by Mr. Wittmann's letter of March 1, 1987, defendant's counsel discussed before filing the same. Beyond their "wildest dreams" did defense counsel believe the court would sustain the majority of Exceptions. The Matthew 18 theory was derived by Treeby and Indest shortly before the morning of the court's hearing on the Exceptions on July 15, 1987, and the court accepting counsel's representations in good faith felt that there was not subject matter jurisdiction. Shortly thereafter, all the defendants followed with the same argument, knowing at all time that there was no Assemblies of God belief that this was their obligation and that their conduct was in furtherance of their scriptural belief. As indicated in the deposition of Cecil Janway, he mailed out letters to answer questions. As indicated in Jimmy Swaggart's deposition, he knew

nothing about Matthew 18 and his philosophy was to cover the sin of brother rather than disclose it. However, as the court can take judicial notice, Jimmy Swaggart did not even follow his own philosophy in this case.

Accordingly, the defendants have violated Article 863 of the Louisiana Code of Civil Procedure, as well as Rules 3.1 and 3.3 of the Louisiana Supreme Court Rules of Professional Conduct is misleading the court and/or concealing their clients' true beliefs.

Mr. Peter Feringa of the Chaffe, McCall firm has repeatedly made attempts at the last minutes during proceedings in the trial court, the Fourth Circuit Court of Appeals, depositions after great expenses have been incurred by all parties, particularly the plaintiff, to delay the proceedings, to harass the plaintiff and to cause unnecessary delay and needless increase in the cost of this litigation. Furthermore, Mr. Feringa had the audacity to file an *ex parte* motion for the plaintiff to post a security bond on the eve of Mr. Treeby's deposition and just two weeks prior to his client's, Micheal Indest, deposition and tell the court a bond is needed because of the extreme expense plaintiff is causing defense counsel. All of such actions take in the eleventh hour by Mr. Peter Feringa of Chaffe, McCall without so much as the courtesy of a telephone call to either of plaintiff's counsel so that the matter could be discussed in a effort to eliminate unnecessary costs and expenses. The court can only assume, however, since Stone, Pigman's firm is co-counsel for Michael Indest, Lakeview Christian Center and William Treeby, that they are also a party to these devious actions. Moreover, as indicated in the Motion, defendants

have objected to discovery, failed to comply with discovery, and made every effort possible to increase the cost of litigation to plaintiff. It was obvious in the conference with the court on January 5, 1989, that defense counsel wants each deposition to be completed to force plaintiff to file motions to compel for each individual party defendant. The above described conduct all has been in violation of Article 863 of the Louisiana Code of Civil Procedure, Article 224 of the Louisiana Code of Civil Procedure and Rules 3.1, 3.2, 3.3 and 3.4 of Louisiana Supreme Court Rules on Professional Conduct.

For each and all the foregoing reasons, plaintiff respectfully requests this court to award plaintiff's reasonable attorney's fees and costs in the amount of FIFTY THOUSAND AND NO/100 ($50,000.00) DOLLARS for having to defend frivolous exceptions, motions, and duplicate efforts for discovery as a result of the above conduct.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been forwarded to all counsel of record by depositing a copy of the same in the United States mail, postage prepaid and properly addressed.

Lake Charles, Louisiana, this 9 day of January, 1989.

/s/ Hunter W. Lundy
HUNTER W. LUNDY

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Please Serve:

All defendants through their
attorneys of record

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 87-5289 DIVISION "K" DOCKET NO.

DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, *IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, CASE NO. 04024-K* AND *IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., CASE NO. 04025-K*

VERSUS

JIMMY SWAGGART AND
JIMMY SWAGGART MINISTRIES, INC., ET AL

FILED:_____ _____
DEPUTY CLERK

ORDER

(Filed January 10, 1989)

IT IS HEREBY ORDERED that defendants in the above captioned matter appear on the ___ day of ___, 1989, at ___ o'clock ___.m. to show cause why plaintiff's Motion for Contempt and/or for Sanctions should not be sustained.

SO ORDERED this ___ day of ___, 1989, at New Orleans, Louisiana.

_____
RICHARD J. GANUCHEAU
District Judge

Please Serve:

All defendants through
their attorneys of record

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